United Nations E/C.19/2004/5

Economic and Social Council

Distr.: General
24 February 2004

Original: English

Permanent Forum on Indigenous Issues
Third session
New York, 10-21 May 2004
Item 4 of the provisional agenda*
Mandated areas

Information received from the United Nations system

Note by the Secretariat

In its report on its second session, held in May 2003, the Permanent Forum on Indigenous Issues identified proposals, objectives, recommendations and areas of possible future action and, through the Economic and Social Council, recommended that States, United Nations system and intergovernmental organizations, indigenous peoples and non-governmental organizations assist in their realization. Information received in this regard from the United Nations system is contained in the present document and its addenda.

* E/C.19/2004/1.

04-24867 (E) 180304

United Nations Human Settlements Programme

Summary

The United Nations Human Settlements Programme (UN-Habitat) works towards improving living conditions, development of adequate shelter for all and sustainable human settlements development, while focusing on the needs of the poor and other vulnerable and disadvantaged groups, including indigenous peoples. The Habitat Agenda and other relevant international instruments and framework related to economic and social development and human rights provide guidance to UN-Habitat in its work in the human settlements development field. The main ongoing activities of UN-Habitat relevant to the needs of indigenous peoples are related to the efforts to promote inclusiveness, social integration and the realization of housing rights in human settlements, for example, activities related to the implementation of target 11 of the Millennium Development Goals, the Global Campaign on Urban Governance, the Global Campaign for Secure Tenure and the United Nations Housing Rights Programme.

In response to the outcome and requests from the second session of the Permanent Forum on Indigenous Issues, held in May 2003, in particular those related to actions requested in paragraphs 5 (a), 32 and 79 of the recommendations, UN-Habitat has strengthened its focus on indigenous issues and the needs of indigenous peoples. Jointly with the Office of the United Nations High Commissioner for Human Rights and in response to the requests in paragraph 32, UN-Habitat is undertaking a research project on indigenous peoples and the right to adequate housing: a global overview. This research indicates that despite some focused policies and practices in a number of countries, indigenous peoples suffer from worse living and housing conditions than the population at large. The final report of this research initiative — including case studies from Australia, Canada, Ecuador, Finland, Kenya, Mexico, Norway, Sweden, the Philippines and the Russian Federation — is expected to be published towards the end of 2004. The highlights of the research findings, the preliminary observations and recommendations are summarized in section IV of this report.

Contents

		Paragraphs	*Page*
I.	Introduction	1–3	4
II.	Background and general context of UN-Habitat activities regarding indigenous issues	4–6	4
III.	Specific relationship of UN-Habitat activities to issues emphasized at the second session of the Forum requiring action from United Nations organizations/ agencies	7–17	5
IV.	Summary of the work in progress on the study on indigenous peoples and the right to adequate housing: a global overview	18–65	7
	A. Context	22–31	8
	B. International human rights instruments and mechanisms	32–48	10
	C. Concluding observations	49–64	13
	D. Preliminary recommendations	65	17

I. Introduction

1. The present report is prepared in response to recommendations of the Permanent Forum on Indigenous Issues at its second session as specified in paragraphs 5 (a), 32 and 79, and in other paragraphs of its report[1] as related and relevant to the mandate and activities of the United Nations Human Settlements Programme (UN-Habitat). This response can be found in sections III and IV below. The summary of work in progress presented in section IV should be noted as the most specific current activity of UN-Habitat related to indigenous peoples and issues.

2. Information and suggestions regarding the special theme of the third session "Indigenous women" and related UN-Habitat activities are presented in paragraphs 11 to 16 below. It should also be noted that the research in progress on indigenous peoples and the right to adequate housing: a global overview — which is summarized in section IV below — has a particular focus on the conditions of and issues relevant to indigenous women.

3. Major upcoming conferences/meetings of UN-Habitat most relevant to indigenous issues include:

(a) The second session of the World Urban Forum, to be held at Barcelona, Spain, from 13 to 17 September 2004;

(b) The twentieth session of the Governing Council of UN-Habitat, to be held at Nairobi, from 11 to 15 April 2005.

II. Background and general context of UN-Habitat activities regarding indigenous issues

4. UN-Habitat works towards development of adequate shelter for all and sustainable human settlements development with the focus on increasing inclusiveness and social integration, the eradication of poverty and the realization of housing rights as effective means to improving living conditions. The activities have a particular focus on protecting vulnerable and disadvantaged groups, including the urban poor and indigenous peoples, particularly through measures that aim to promote, protect and fulfil human rights. This work is guided by the Habitat Agenda[2] and the United Nations Millennium Declaration[3] as well as human rights instruments, treaties and their monitoring bodies.

5. The Habitat Agenda addresses issues of indigenous peoples extensively, and a total of 14 out of its 241 paragraphs makes reference to this topic, elaborating on current conditions and needed actions. Paragraph 122 in particular provides extensive guidance to governments and leaders of indigenous communities in order to "promote the continuing progress of indigenous peoples and to ensure their full participation in the development of the rural and urban areas in which they live, with full respect for their cultures, languages, traditions, education, social organizations and settlement patterns".[2]

6. Based on these objectives and guidance, UN-Habitat, through its diverse activities, seeks to raise the awareness and to enhance the capacity of central and local government policy makers and stakeholders so that housing, land, property and

other socio-economic issues can be dealt with more effectively. Actions of UN-Habitat relevant to these contexts are implemented as part of and contribute to its main initiatives related to indigenous peoples and issues, namely:

(a) The implementation of target 11 of the Millennium Development Goals, which aims to improve the lives of at least 100 million slum-dwellers by 2020;

(b) The Global Campaign on Urban Governance;

(c) The Global Campaign for Secure Tenure;

(d) The United Nations Housing Rights Programme.

III. Specific relationship of UN-Habitat activities to issues emphasized at the second session of the Forum requiring action from United Nations organizations/agencies

7. As explained above, UN-Habitat is addressing most of the issues raised at the second session of the Forum within its general activities aimed at improving living conditions of the poor, vulnerable and disadvantaged groups, including indigenous peoples. Within this framework, the work of UN-Habitat on security of tenure provides scope for strategic partnership with indigenous people in addressing the complex nature of land issues. All indigenous people retain a strong sense of their distinct cultures, the most salient feature of which is a special relationship to land. The work of UN-Habitat on poverty alleviation and the Millennium Development Goals has the potential to establish natural links with indigenous people's livelihoods. UN-Habitat seeks to promote the participation of civil society/non-governmental organizations in human settlements development and related decision-making processes. This is also very relevant to the needs and concerns of indigenous peoples. Despite the fact that urban settlements hold tremendous potential as engines of economic and social development, they can at the same time also generate and intensify social exclusion, denying the benefits of urban life to the poor, to women, youth and indigenous peoples, religious or ethnic minorities and other marginalized groups. The focus of UN-Habitat in this regard is to promote sustainable urbanization and urban poverty reduction with active engagement of civil society as well as broad-based participation, particularly by youth.

8. The Habitat Agenda emphasizes the need to work in partnership with youth — including indigenous youth — in employment programmes and vocational skills development that enhance their capacity to participate fully in urban poverty reduction. Although it has no specific projects or programmes on indigenous children and youth, UN-Habitat has the operational and normative experience of dealing with local authorities through its various programme activities. It is through this approach that innovative projects at the local level related to urban youth including indigenous youth, can be formulated and implemented.

9. With a view to achieving synergy and optimization of the use of resources allocated to youth in several agencies, the active participation and contribution of United Nations agencies in joint programming has been considered necessary. UN-Habitat thus intends to collaborate with other agencies in addressing the issues of youth, including indigenous youth, through the proposed global partnership initiative for youth in Africa. The entities identified for such collaboration by the

Governing Council of UN-Habitat at its nineteenth session are the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Office on Drugs and Crime and the Department of Economic and Social Affairs.[4]

10. It is envisaged that the second World Urban Forum — which is part of the Universal Forum of Cultures and will take place in Barcelona in September 2004 — will bring together young people from all over the world. This Forum will provide avenues for the involvement of indigenous communities, particularly the youth. UN-Habitat has established links with organizations such as the Minority Rights Group for this purpose.

11. UN-Habitat has a specific organizational unit — the Gender Policy Unit — which aims at ensuring the effective implementation by UN-Habitat of its gender policy and addressing the Habitat Agenda commitment to gender equality. The gender policy of UN-Habitat has three overall objectives:

(a) To promote women's equal rights and women's empowerment internationally within the area of human settlements development;

(b) To support governments, non-governmental organizations and other partners in capacity-building and development in order to mainstream gender equality in human settlements development;

(c) To mainstream a gender perspective throughout UN-Habitat's activities.

While working towards these objectives, UN-Habitat focuses particularly on the needs of the most vulnerable and disadvantaged women's groups, including indigenous women.

12. The main method of outreach for the empowerment of women in human settlements is through the global women's networks that form part of the Huairou Commission. These networks include the Habitat International Coalition Women and Shelter Network, Grassroots Organizations Operating Together in Sisterhood and the International Council of Women. These networks aim to advance the capacity of grass-roots women worldwide to strengthen and create sustainable communities. The Gender Task Force, an internal body in UN-Habitat, aims to mainstream gender in all aspects of the programme's work. This body meets regularly to develop a consolidated gender mainstreaming approach, methods, tools and instruments. It also has members who are the gender focal points in the three regional offices in Rio de Janeiro, Brazil, Fukuoka, Japan and Nairobi.

13. Together with the United Nations office of the Special Adviser on Gender Issues and Advancement of Women, the Division for the Advancement of Women of the Department of Economic and Social Affairs of the Secretariat, the Inter-Agency Committee on Women and Gender Equality and the Huairou Commission, the umbrella body for international networks on women, homes and communities, UN-Habitat and the women's networks partners are currently engaged in a wide range of activities to bring the concerns of grass-roots women into public decision-making and policy at a variety of levels. Current activities include the Grassroots Women's International Academy for peer-group learning among communities in the North and South, the "local-local dialogues" to activate grass-roots women's participation in local authority decision-making. The Gender Policy Unit works closely with the

global campaigns on secure tenure and good urban governance. Extensive work on women's property rights is also under way. A draft policy paper on women and urban governance was prepared in 2000 and is currently being reviewed by partners.

14. The ongoing research on indigenous peoples and the right to adequate housing indicates that indigenous women are particularly affected by inadequate housing conditions and other elements that violate or hinder realization of housing rights.

15. Just as noted for indigenous youth above, the World Urban Forum — to be convened at Barcelona in September 2004 — provides avenues for the involvement of indigenous women, and opportunities for them to raise their concerns.

16. The most significant activity of UN-Habitat specifically on indigenous peoples and issues is, however, the research initiative on indigenous peoples and the right to adequate housing: a global overview, undertaken within the United Nations Housing Rights Programme, which is implemented jointly with the Office of the United Nations High Commissioner for Human Rights. This initiative was developed in response to paragraphs 6 (a), 25 (e) and 28 (b) of the report on the first session of the Forum,[5] and is also contributing to the United Nations system-wide work as defined and requested in paragraphs 3 (a)-3 (c), 8 and 24 of the same report and to the requirements of paragraph 5 of General Assembly resolution 57/191 of 18 December 2002. This initiative also provides a response to several recommendations of the Forum at its second session, in particular to the needs specified in paragraph 32 of the report of that session.[1]

17. In that recommendation (para. 32), the Forum drew the attention of all concerned — including the Governments and related United Nations organizations — to the global trend of increasing urbanization, which affects substantially also indigenous populations, and invites focused actions to improve living and housing conditions of indigenous peoples. This paragraph especially recommends that UN-Habitat submit a report to the Forum at its third session and participates in the dialogue on that topic. Since the research undertaken and the finalization of its report could not be completed in time to be submitted to the third session of the Forum, the summary of work in progress in section IV below is submitted to present the highlights of the preliminary findings, observations and recommendations.

IV. Summary of the work in progress on the study on indigenous peoples and the right to adequate housing: a global overview

18. The study has been undertaken as an activity of the United Nations Housing Rights Programme in close collaboration with the Office of the United Nations High Commissioner for Human Rights and the secretariat of the Forum. The methodology for the study takes into account its global scope and the fact that it is the first study of its kind. The study includes a review of relevant literature, identification of case studies, and a collection of primary data through direct contacts with organizations/networks of indigenous peoples.

19. What is presented here is a summary of the preliminary findings of this study. The summary does not include a discussion of the case studies undertaken, but draws on the lessons learned from these studies. The experiences from Australia,

Canada, Ecuador, Finland, Kenya, Mexico, Norway, Sweden, the Philippines and the Russian Federation will be elaborated upon in the final report, which will be published towards the end of 2004.

20. In every region of the world, indigenous peoples constitute one of the most disadvantaged groups. Their disadvantage is experienced in all realms — economic, social, political, environmental and cultural — and is reflected in their living and housing conditions. The study provides a global overview of these conditions, and an assessment of the extent to which indigenous peoples' housing rights are recognized and implemented. Where possible, the study focuses on the housing experiences of indigenous women, who often bear the brunt of poor housing conditions, and who experience gender-specific forms of housing inequality. Despite the importance of housing in the everyday lives of indigenous peoples and the deep connection between housing and land rights, this study seems to be the first research report specifically devoted to the housing conditions of indigenous peoples.

21. The summary follows the structure of the final report in progress, with the exception of the case studies, which have been excluded from this summary. Section A provides the context for the discussion that follows. It outlines definitions, or rather characteristics of the term "indigenous" and provides a brief global overview of the living conditions of indigenous peoples, as well as an introduction to their relationship to land. Section B provides an overview of international legislation pertaining in general to housing rights and specifically to indigenous peoples. Section C reflects on the case studies undertaken and highlights commonalities and emerging themes. Broad observations about the status of indigenous women's and men's housing rights are elaborated upon. These concluding observations form the basis for preliminary recommendations for international and national action (in section D) aimed at improving the housing conditions of indigenous peoples.

A. Context

Who is indigenous?

22. It is estimated that there are over 300 million indigenous people in more than 70 countries worldwide. While there is no universally agreed upon definition of "indigenous", the characterizations most relied upon internationally are those proposed in the 1986 report by José Martinez Cobo[6] and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Both definitions include an emphasis on self-identification.

23. The Martinez Cobo report states that indigenous communities, peoples and nations are those that have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, and those that consider themselves distinct from other sectors of the societies now prevailing in those territories.

24. ILO Convention No. 169 states that people are considered indigenous either because they are the descendants of those who lived in the area before colonization, or because they have maintained their own social, economic, cultural and political institutions since colonization and the establishment of new States. It states that self-identification "shall be regarded as a fundamental criterion" for determining the groups to which the Convention applies.

25. This study relied on both of these characterizations to determine the appropriateness of case studies, relying in particular on the concept of self-identification.

Current living conditions of indigenous peoples

26. Indigenous peoples today live under conditions of severe disadvantage. Poverty is one of the characteristics that define the lives of many, if not most, indigenous peoples. In almost every country, indigenous peoples are more likely than the mainstream population to have low incomes, poorer physical living conditions (including overcrowding in poor quality housing), less valuable assets, less and poorer access to education, health care and related services. They are also subjected to worse access to markets for labour, land, credit and a range of other goods and services, and experience weaker political representation. Indigenous peoples in many countries experience widespread discrimination. Moreover, in some cases where education, health care and other facilities are available to indigenous peoples, they are often culturally inappropriate.

Indigenous peoples and land

27. Lands, territories and resources are often of spiritual, social, cultural, economic and political significance to indigenous peoples and are inextricably linked to their identity and continued survival and vitality. The socio-economic disadvantage experienced by indigenous peoples across the world can be traced to both the historical and contemporary dispossession of indigenous peoples from their lands and the exclusion of indigenous peoples from economic activity.

28. Today, dispossession of indigenous lands and resources occurs when, inter alia, States fail to acknowledge indigenous rights to lands, territories and resources, and/or when States expropriate indigenous lands for "national interests", including development. Whether in Australia, Canada, Ecuador, Mexico, Scandinavia, the Philippines or the Russian Federation, indigenous peoples often lack security of tenure, living with the threat of forced eviction from their homes and/or lands.

29. The expropriation of indigenous peoples' lands for development purposes without adequate compensation measures is particularly harmful to the socio-economic status of indigenous peoples. In every part of the world, the lands and resources of indigenous peoples are desirable targets for large-scale development projects such as hydroelectric and multi-purpose dams, as well as for mining and logging operations, and tourism development projects. Such expropriations are driving indigenous peoples from rural to urban areas, where housing is scarce, expensive and — because of discrimination — often inaccessible.

30. The loss of lands has particularly severe impacts on indigenous women. For example, it often results in an increased workload for women, who must walk long distances to find alternate sources of water. Moreover, women can lose their integral role in agricultural production, driving them out of income-earning productive activities and thus compel their dependence on men.

Self-determination, land and housing

31. The dispossession of indigenous peoples from their lands has robbed them of the ability and opportunity to use their own resources to further their own

development. This has deeply affected their ability to access and maintain adequate housing. Because the enjoyment of adequate housing is intertwined with indigenous peoples' access to and control over resources, housing must be understood as an integral component of the rights to self-determination and land — the cornerstones of indigenous peoples' struggles around the world. If indigenous peoples had secure land rights they could choose whether to migrate to cities. At the same time, secure land rights would provide an economic base that could be used to assist urban indigenous populations.

B. International human rights instruments and mechanisms

32. Indigenous peoples' right to housing is protected under two international human rights legal frameworks: international instruments pertaining to housing rights and instruments specific to indigenous peoples. The rights of indigenous women are protected within each of these frameworks through provisions on non-discrimination and equality.

Housing rights instruments and mechanisms

33. There are several international human rights documents pertaining to the right to adequate housing. Treaties codify the right; treaty monitoring bodies apply the right and assess the extent to which State parties have implemented it; general comments provide an interpretation of the right; special rapporteurs provide a detailed independent analysis of the right using specific country contexts to highlight their findings; and human rights resolutions and world conference documents reaffirm the right and political commitment to it. This study reviewed the various references to housing rights, highlighting relevant provisions for indigenous women and men, including, inter alia:

- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Convention on the Elimination of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- General comments adopted by treaty monitoring bodies;
- Resolutions adopted by the United Nations Commission on Human Rights and the Governing Council of UN-Habitat;[7]
- Reports of the Special Rapporteur of the Commission on Human Rights on adequate housing;
- The Beijing Platform for Action of the Fourth World Conference on Women;
- The Habitat Agenda.

What follows is a brief overview of the most prominent among these instruments, namely the International Covenant on Economic, Social and Cultural Rights, and its general comments Nos. 4 and 7.

Legal provisions of the International Covenant on Economic, Social and Cultural Rights

34. The most significant codification of the right to housing is contained in the International Covenant on Economic, Social and Cultural Rights. States that ratify the Covenant are legally bound by its provisions. Its article 11(1) enshrines the right to an adequate standard of living, including food, clothing and housing and to the continuous improvement of living conditions. All economic, social and cultural rights must be exercised in accordance with article 2(2) (non-discrimination) and article 3 (equality between men and women). This means that indigenous peoples are entitled to enjoy the right to housing without discrimination and equally with the majority population. Similarly, indigenous women are entitled to enjoy the right to housing without discrimination and equally with both indigenous men and the majority population.

35. The Committee on Economic, Social and Cultural Rights is the treaty monitoring body responsible for monitoring States party compliance with the International Covenant on Economic, Social and Cultural Rights. It is also responsible for elaborating on the rights codified in the Covenant and, as part of this mandate, it has interpreted the meaning of the right to adequate housing in two general comments. These general comments, although not legally binding per se, provide guidance and are designed to assist Governments in fulfilling their legal obligations as States parties to the Covenant.

Legal interpretations of the International Covenant on Economic, Social and Cultural Rights

36. General comment No. 4 (1991) on the right to adequate housing outlines seven constituent elements required in order for housing to be considered adequate: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. Analysing the housing conditions of indigenous peoples against these seven elements provides a framework within which to understand the housing disadvantage experienced by indigenous peoples. It also assists in an assessment of the extent to which indigenous peoples enjoy the right to adequate housing.

37. General comment No. 7 (1997) on the right to adequate housing (art. 11(1) of the Covenant): forced evictions is the most comprehensive legal document pertaining to forced evictions under international law. It defines forced eviction as the permanent or temporary removal against the will of individuals, families and/or communities from their homes and/or land, without appropriate forms of legal or other protection.

38. General comment No. 7 recognizes that the practice of forced evictions has a very negative impact on indigenous peoples, and in particular on indigenous women. It stipulates that the State must refrain from implementing forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions. The general comment also states that in addition to Government, private landlords, developers and even international institutions should not engage in the practice of forced evictions.

39. The comment provides States and other actors with direction as to acceptable actions before, during and after a planned eviction. For example, prior to executing

the eviction, the State should explore "all feasible alternatives" with a view to avoiding the eviction.

40. As several of the case studies reviewed by this research study reveal, forced eviction is one of the most pressing housing concerns facing indigenous peoples. Each instance of forced evictions affecting indigenous peoples must be regarded in the light of the human rights principles laid out in general comments Nos. 4 and 7.

Application of the legal provisions of the International Covenant on Economic, Social and Cultural Rights and activities of the Committee on Economic, Social and Cultural Rights

41. The Committee on Economic, Social and Cultural Rights has raised the issue of indigenous housing in a number of instances. For example, in its 1997 review of Peru, the Committee expressed its concern about the great number of forced evictions of people in the Amazon basin, resulting in the destruction of their habitat and way of life. In its 1998 review of Canada, the Committee expressed its concern at the shortage of adequate housing for indigenous peoples and inadequate access to safe drinking water within indigenous communities on reserves, and the fact that almost a quarter of the dwellings of indigenous households required major repairs and lacked basic amenities. In its review of Australia in 2000, the Committee expressed concern that the indigenous populations of Australia continued to be at a comparative disadvantage in the areas of housing, employment, health and education.

Human rights instruments and mechanisms specific to indigenous peoples

42. A number of human rights documents pertaining specifically to indigenous peoples include important references to housing rights and related principles. The research study reviewed a number of such instruments. The highlights from some of these key instruments are summarized below.

ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries

43. Convention No. 169 is the most comprehensive and up-to-date international instrument on the conditions of life and work of indigenous and tribal peoples. As an international treaty, it becomes legally binding once ratified. By the end of 2003, the Convention had been ratified by 17 countries.

44. The Convention emphasizes the right of indigenous and tribal peoples to control their own economic, social and cultural development. It also recognizes that indigenous and tribal peoples have a special relationship with the land and that this is the basis of their cultural and economic survival. In this regard, it calls for a number of special measures of protection with respect to indigenous land rights, including the need to protect indigenous and tribal peoples from unauthorized intrusion or use of their lands, and the need to protect indigenous and tribal peoples from being removed or evicted from their lands. It also includes an equality rights provision for indigenous women.

Draft declaration on the rights of indigenous peoples

45. Although the draft declaration on the rights of indigenous peoples is still being negotiated by Governments — and thus has no formal legal standing — it is already being used by indigenous organization in their struggles for human rights. With respect to housing, the draft declaration includes several provisions relating to forced evictions. It asserts that indigenous people have the right not to be removed from their lands by force, and that no relocation should take place without their free and informed consent and only after adequate compensation is paid or the option of return is provided. It also sets out indigenous peoples' rights to their own economic activities, to special measures to improve their economic and social conditions and to set their own priorities for development. Furthermore, it includes a provision for equality and non-discrimination between indigenous women and men.

Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedcms of indigenous people

46. The first report of the Special Rapporteur (E/CN.4/2002/97) highlights the overall disadvantage suffered by indigenous peoples across the world, especially with respect to their economic, social and cultural rights. The second report (E/CN.4/2003/90 and Add.1-3) is devoted to an analysis of the human rights violations caused by the implementation of large-scale or major development projects, like hydroelectric dams. The report notes that these projects are of serious concern for indigenous peoples around the world and have grave consequences in terms of their housing. The report indicates that the practice of forced eviction or involuntary resettlement is commonplace in large-scale development projects and that this practice violates civil, cultural, economic, political and social rights of indigenous peoples. The report also notes that women and children are particularly affected by this practice.

Beijing Declaration of Indigenous Women

47. Although not an official document of the Fourth World Conference on Women, the Beijing Declaration of Indigenous Women includes a number of provisions for the improved living and housing conditions of indigenous women. The document was adopted by indigenous women at the Conference in response to their disagreement with the official documents of the Conference, e.g., that the Beijing Platform for Action did not acknowledge the systemic causes of their disadvantage.

48. The Declaration calls upon the international community and Governments to respect the rights of indigenous people to decide what to do with their lands and territories, especially in the context of national Governments opening-up of indigenous territories to foreign investors such as mining corporations. The document also demands that all internally displaced indigenous peoples be allowed to return to their own communities and that the necessary support services be provided to them.

C. Concluding observations

49. The research study has revealed that while indigenous peoples and communities across the world are culturally distinct, their housing conditions and

experiences are remarkably similar. This section provides an overview of some of the most prominent similarities.

Colonization, self-determination and exclusion from decision-making

50. Most of the indigenous peoples reviewed in the study have experienced the effects of colonialism. In many cases, colonization and its effects has threatened the existence, identity and autonomy of indigenous peoples.

51. One of the implications of colonialism is the ongoing effects of lack of self-determination and the exclusion of indigenous people from decision-making structures and processes. With respect to housing, this has meant that indigenous people have been negatively effected in their access to and control over the resources needed to develop and manage their own housing. At the same time, many indigenous peoples have not been invited to participate in a meaningful way in the development and implementation of government housing policies and programmes, nor in discussions or negotiations with State and non-State actors regarding development projects on their lands.

Socio-economic disadvantage

52. In almost all countries reviewed in this research study, indigenous communities have an inferior standard of living compared with the majority population. This disadvantage applies to health, education, employment as well as housing.

Land rights

53. The case studies revealed strong connections between indigenous land rights and housing. These interconnections suggest that indigenous housing disadvantage cannot be solved until indigenous land rights are recognized, land conflicts are resolved and the protection of the natural environment becomes a priority. Indigenous women's rights to housing will continue to suffer until their rights to land ownership are realized. The right to self-determination also seems to be an important factor for the improvement of living conditions, eradication of poverty and housing disadvantage among indigenous peoples.

Discrimination against indigenous peoples (and indigenous women in particular)

54. Indigenous peoples are subject to discrimination and inequality in almost all aspects of housing, including laws and policies that have discriminatory effects, discriminatory allocation of resources for housing and discriminatory practices of private landlords in the rental market (which often prevents them from renting even the worst accommodation). In fact, housing and other development policies and programmes tend either to discriminate against indigenous peoples directly or to have discriminatory effects on their living conditions. Indigenous peoples are often confronted with rampant discrimination when attempting to access credit and loans to buy or build their own housing. When they are housed, they often lack access to such basic services as potable water, paved roads and electricity. Health clinics and schools are often located at great distances from indigenous communities.

55. The study indicate that these inadequate and discriminatory conditions prevail even in countries where there are domestic laws and mechanisms aimed at

promoting equality and protection against discrimination in housing, and/or legislation recognizing land title rights for indigenous peoples. In many instances, indigenous peoples living in countries that have ratified international conventions or treaties that secure the housing and land rights of indigenous peoples, experience that these international legal obligations often fall on the wayside in the face of economic development interests.

56. The study shows that indigenous women bear the brunt of these inadequate conditions. At the same time, they experience gender-specific housing disadvantage, such as domestic violence, and discrimination as a result of customs, traditions and beliefs that often curtail or prohibit women's access to, control over and right to inherit land, property and housing. In many cases, the only way for indigenous women to access housing is to be or to stay married. Because of discriminatory customs, traditions and beliefs — including the devalued perception of women's domestic work — upon marriage breakdown, it is not uncommon for indigenous women to be rendered homeless. Women are generally responsible for childcare, and upon marriage breakdown they have to choose between leaving the children with their families, share overcrowded dwellings, migrate to an alien and difficult urban environment in search of employment opportunities, or stay in a marriage, even if it is abusive.

Violence against women

57. Indigenous women identify domestic violence as one of the most serious and pressing issues facing their communities. Although violence against women — and domestic violence more specifically — are broad issues with many causes and consequences, housing is invariably a central factor. For example, if indigenous women are prohibited from owning or renting housing, fleeing an abusive situation is next to impossible.

Inadequate housing conditions

58. The case studies reveal that, in most countries, indigenous people live in extremely inadequate housing conditions and are not enjoying fully any one of the seven constituent elements of the right to adequate housing: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.

59. Although the case studies reveal that indigenous peoples are, on the whole, not enjoying the right to adequate housing, this research has also noted several good practices within the development of housing projects or programmes. The most effective have been those that have directly and actively involved indigenous communities and have accounted for the specific needs and the realities of indigenous people. Successful projects have often involved multiple actors (i.e., non-governmental organizations, including faith-based organizations, local authorities and international cooperation agencies) — especially indigenous community groups — during all or at least most stages of the process. The use of local or regional materials and appropriate technologies in the construction of housing has also been effective. It reduces costs, generates local employment, and ensures the housing is adapted to the environmental conditions of the indigenous area. Other important aspects of successful programmes and projects include: decentralized decision-making, the knowledge and recognition of human rights, and

the inclusion of women in all stages of the development process, recognizing their important role at the household as well as community level.

Overcrowding

60. In many of the case studies, overcrowding was identified as a specific housing problem facing indigenous people. An overcrowded house accelerates the deterioration of the dwelling, facilitates the transmission of diseases and promotes domestic violence.

Cultural inadequacy

61. Several of the case studies indicated that housing policies, programmes and structures are often culturally inappropriate for indigenous people. This may occur because indigenous peoples are not included in the formulation (nor in the implementation) of housing policies, programmes and projects.

Urban migration

62. It is often assumed that indigenous people are primarily rural dwellers. This is no longer the case. The research reveals that extreme poverty, the deterioration and dispossession of their lands and forced evictions, combined with the centralization of services and employment opportunities in urban areas, forces or compels thousands of indigenous peoples to migrate to cities and towns. This phenomenon has left indigenous ghost towns and settlements, or reduced its inhabitants to women, children and the elderly. In the cities, indigenous people often experience extreme poverty, rampant discrimination and a loss of spiritual, community and family ties as well as a loss of culture. Their housing conditions are usually very poor, and they are often left homeless.

Evictions

63. Forced eviction is one of the most serious housing problems facing indigenous peoples across the world, in both rural and urban settings. In most instances, forced evictions are the result of development projects such as hydroelectric dams, mining and logging. In other instances, forced evictions occur as a result of discriminatory housing policies, programmes and projects implemented by Governments as well as private landlords. Forced evictions have devastating consequences for indigenous communities. It threatens their very existence. Most often, forced eviction results in the permanent displacement of families from their lands, and thus from their means of subsistence. It leads to relocation to places where they feel they do not belong, and often to urban centres, where poverty is endemic, and where it is difficult for indigenous culture to flourish. Having been dispossessed from their lands, they lack the economic resources and employment opportunities to address their basic needs. For women, who bear the brunt of forced eviction, it can mean an increased workload, increased poverty, instability and domestic violence.

Good laws and policies and the disparity between laws, policies and reality

64. In many of the case studies reviewed by this research it has been observed that a solid and progressive legal foundation for the rights of indigenous peoples has been adopted or are in the process of being adopted. Many pieces of legislation recognize the land rights of indigenous peoples and protect them against forced

relocation. In many instances, however, the laws are not being implemented in a proactive manner, to the benefit of indigenous peoples.

D. Preliminary recommendations

65. **Based on the observations above, the following offers a summary of preliminary recommendations to improve the housing conditions of indigenous people.**

International law

(a) **Member States should adopt the draft declaration on the rights of indigenous peoples as soon as possible — without weakening its provisions, especially those pertaining to land rights;**

(b) **Member States should ratify ILO Convention No. 169 and other relevant international human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Convention on the Elimination of Racial Discrimination, as well as relevant regional instruments;**

(c) **States Parties should effectively implement recommendations and concluding observations of relevant United Nations treaty bodies;**

National law and institutions

(d) **Once ratified, the international legal instruments mentioned above must be incorporated into domestic law and jurisprudence to ensure their applicability in the domestic context;**

(e) **Accessible and culturally appropriate legal and other mechanisms must be established to ensure that indigenous peoples can enforce their rights as established under international and national law;**

(f) **National human rights institutions should promote the rights of indigenous people to non-discrimination and equality, land and an adequate standard of living, including housing;**

(g) **Governments and indigenous community leaders must enact and implement laws and policies that legally protect indigenous women's equal rights to land, property and inheritance, regardless of customs, tradition and tribal law;**

Self-determination

(h) **The right to self-determination for indigenous peoples is an important factor for the realization of all human rights, including the right to housing. Self-determination can improve inclusiveness within and between communities and can increase the effective participation of indigenous peoples in decision-making processes and policy development that directly affects them;**

Discrimination and inequality

(i) In accordance with international human rights law, States must urgently address the discrimination and inequality experienced by indigenous peoples, and particularly that experienced by indigenous women. This requires that rights be interpreted, and that policies and programmes be designed in ways that take indigenous men and women's socially constructed disadvantage into account, that secure for women and men the equal benefit, in real terms, of laws and measures and that provide equality for indigenous women and men in their material conditions;

(j) Indigenous communities must ensure that indigenous women are not subject to discrimination and inequality within their own communities, including through custom and tradition. As indigenous peoples achieve greater levels of participation in decision-making processes, the principles of equality and non-discrimination must guide this process, in particular with regard to the perspectives of indigenous women;

Housing adequacy

(k) In recognition of the special needs of indigenous peoples, States must ensure that national budgets guarantee adequate resources for indigenous housing development and maintenance, and that these resources actually reach and benefit indigenous communities;

(l) Governments should ensure that indigenous people have the means to provide for their own housing needs by restoring a land and economic base that will enable indigenous people to become economically self-reliant;

(m) Within the overall framework of enabling shelter policies and programmes, indigenous communities should be empowered to participate actively and to take a leading role in decision-making and policy development that relates to their housing conditions — whether in urban or rural areas (i.e. to all aspects of housing adequacy as defined in international instruments, including cultural adequacy);

(n) When needed, indigenous peoples must be assisted in developing their expertise in the full range of technical capabilities for effective housing programme design, delivery and management in both urban and rural settings;

(o) Governments and non-governmental organizations must ensure that specific housing programmes and services are available for indigenous people who reside in urban areas. Ideally, to ensure cultural appropriateness, these programmes and services should be managed through the active participation of the indigenous people themselves;

(p) Sustainable traditional and innovative technologies and networks must be developed to ensure all indigenous communities have access to potable water, sanitation services and electricity;

(q) Governments must ensure that adequate health services and elementary and secondary schools are located near all indigenous communities. Such facilities should respect and promote indigenous languages and cultures;

Domestic violence

(r) **Governments, non-governmental organizations and indigenous communities must ensure the provision of safe shelters and services specifically for indigenous women having to leave situations of domestic violence. It is imperative that these services be culturally appropriate. This includes ensuring that staff are indigenous or are trained to work effectively with indigenous women;**

Development projects and evictions

(s) **International, regional and national financial institutions play a vital role in facilitating major development projects by providing various forms of financial support. As such projects have significant impact on the living and housing conditions of indigenous peoples, it is imperative that these institutions' policies regarding development projects be tuned to the needs and conditions of the indigenous peoples; and applied in a manner that ensures consistency with contemporary international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Convention on the Elimination of Racial Discrimination. It must also ensure that such policies are designed and implemented in a manner that complies with international human rights instruments particular to indigenous people, such as ILO Convention No. 169, as well as with any relevant national laws, treaties, agreements or pending agreements regarding human rights and the rights of indigenous peoples;**

(t) **States, in conjunction with international financial institutions and other lending agents, must undertake human rights impact assessments prior to initiating development projects in indigenous areas. If these assessments indicate that human rights violations may result — whether civil, cultural, economic, political or social — the projects must be reviewed and renegotiated to address such concerns;**

(u) **Economic development projects must be developed and implemented with the participation of indigenous peoples as equal partners in decision-making processes. This means that their voices must be heard and their demands and grievances met when major decisions are taken regarding development priorities and the allocation of resources;**

(v) **States and financial institutions must do everything possible to avoid the eviction of indigenous peoples from their homes and lands for development projects. When evictions are absolutely unavoidable, they must be undertaken in a manner that conforms to international human rights standards as contained in general comment No. 7 of the Committee on Economic, Social and Cultural Rights and the United Nations comprehensive human rights guidelines on development-based displacement.**

Notes

[1] *Official Records of the Economic and Social Council, 2003, Supplement No. 23* (E/2003/43), chap. I.

[2] *Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, 3-14 June 1996* (United Nations publication, Sales No. E.97.IV.6), chap. I, resolution 1, annex II.

[3] See General Assembly resolution 55/2.

[4] Resolution 19/13 on enhancing the engagement of youth in the work of UN-Habitat. See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 8* (A/58/8), annex I.

[5] *Official Records of the Economic and Social Council, 2002, Supplement No. 23* (E/2002/43/Rev.1).

[6] José Martinez Cobo, the Special Rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities, in his study of the problem of discrimination against indigenous populations in 1986 (E/CN.4/Sub.2/1986/7 and Add.1-4).

[7] Including those adopted prior to 2002 by the Commission on Human Settlements.